



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with two applications as follows:

By the landlord: as an application for a Monetary Order to keep all or part of the security deposit; and to recover the filing fee associated with his application.

By the tenant: as a cross application for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; the return of all or part of the security deposit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. The tenant testified that she sent her evidence package to both the Residential Tenancy Branch and the landlord. The landlord testified that she did not receive the tenant's evidence. The tenant stated that she used registered mail and that she received confirmation that the package was delivered to the landlord and received by Y.D. The landlord said that she does not know Y.D. and asserted that she only received the tenant's Notice of Dispute Resolution. After much debate, the parties agreed to proceed without the tenant's evidence.

Issue(s) to be Decided

Is the landlord entitled to keep part or all of the security deposit, and if so for what amount?

Is the landlord entitled to recover the filing fee associated with her application?

Is the tenant entitled to a Monetary Order, and if so for what amount?

Is the tenant entitled to the return of part or all of her security deposit, and if so for what amount?

Is the tenant entitled to recover the filing fee associated with her application?

Background and Evidence

The rental unit consists of single detached home. Pursuant to a written agreement, the month to month tenancy started on February 1<sup>st</sup>, 2009. The monthly rent of \$1600.00 was payable on the first of each month. The tenant paid a security deposit in the amount of \$800.00. On August 23, 2010, the tenant served the landlord with a written notice to end tenancy effective September 30<sup>th</sup>, 2010. Condition inspection reports were completed at the start and the end of the tenancy.

The tenant agreed with the landlord's \$120.00 deduction for carpet cleaning, a \$10.00 deduction for lawn seed, and a \$100.00 deduction for minor damage in the workshop. The tenant disputed the landlord's additional monetary claim as follows:

- A \$25.00 fee for labour involved in replacing a small gate wheel.
- A \$40.00 charge for mowing the lawn at the end of the tenancy.

The landlord kept the tenant's security deposit, filed for dispute resolution within the allowed timeline, and submitted that after the above noted deductions, she owes the tenant a balance of \$505.00.

The tenant argued that she discussed the defective wheel many times with the landlord since August 2009, and that the problem was not fixed until June 2010. She stated that the original wheel was flat since the start of the tenancy, and that she installed a temporary wheel in the interim. She stated that the lawn did not need to be mowed and therefore the landlord owed her a balance of \$570.00.

The tenant testified that the microwave/hood unit above the stove stopped working, and that she informed the landlord of the problem. She stated that since the landlord did not respond she purchased an over-the-counter unit. The tenant stated that the landlord threatened her with eviction if she did not deal with the weeds in the driveway, and that on this threat she purchased weed killer rather than using a weed eater. The tenant stated that because a garage window was not locking properly, access from the garage into the house was compromised. She said that the landlord ignored her concern and as a result installed a lockable door knob. The landlord argued that the tenant changed the door knob before telling her of the problem.

The tenant filed a monetary claim as follows:

- Return of her security deposit less carpet cleaning:	\$ 680.00
- Half the cost of a microwave oven:	\$ 30.80
- Weed killer:	\$ 26.83
- Door knob:	\$ 16.79
- Moving expenses:	\$ 491.76
- Storage pod rental:	\$ 235.20
- Total:	\$1481.38

After much discussion, the tenant agreed that the tenancy agreement specified that she was responsible for maintaining the yard.

Whether she had to purchase replacement spools for her weed eater or purchased weed killer, that cost was part of the tenancy agreement for maintaining the yard and the tenant rescinded that portion of her claim.

### Analysis

Concerning the landlord's application; the landlord bears the burden to prove that the tenant did not comply with the Act. At the hearing, the parties were in possession of the condition inspection reports. In reviewing the reports, the landlord agreed that there was no mention of the wheel on any of the reports. In the absence of supporting evidence, and in view of the differences in the parties' testimony, I find insufficient evidence to establish that the problem with the wheel originated from the tenant's breach of the *Residential Tenancy Act* or the tenancy agreement. Therefore I dismiss this portion of the landlord's application. Concerning the charge for mowing, the condition inspection report is void of any comment regarding the lawn. The landlord did not specify why the lawn needed to be mowed. In the absence of substantive evidence, I am unable to make a finding of complete liability against the tenant and I also dismiss that portion of the landlord's claim.

I find on a balance of probabilities that the landlord did not meet the test for the claims concerning the wheel or the lawn. Therefore the landlord has established a claim of \$230.00 as agreed by the tenant, and the tenant is entitled to the return of the balance of her security deposit for \$570.00.

Turning to the tenant's claim; the tenant bears the burden prove that her claims are justified, and that the landlord breached the Act or the tenancy agreement. The tenant chose to move out rather than filing for dispute resolution to deal with the problems with the landlord during the tenancy. Therefore, in the circumstances I find no legal basis under the Act to award the tenant a monetary claim for moving expenses and I dismiss this portion of the tenant's claim.

The evidence supports that the tenant used her own microwave oven and that she replaced a door knob, however I find there is insufficient evidence to prove that the landlord did not comply with the Act. The microwave was not part of the tenancy agreement and was not an emergency repair. In view of the opposed versions of events throughout this hearing, the burden of proof was not met and I dismiss this portion of the tenant's claim.

Accordingly, I find that the tenant has established entitlement to the return of her security deposit, and that amount was established at \$570.00.

### Conclusion

Pursuant to Section 67 of the Act, I award the tenant a monetary order for \$570.00. If necessary, This Order may be registered in the Small Claims Court and enforced as an order of that Court.

Since the parties were partially successful in their respective application, I decline to make an order regarding the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 16, 2011.

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Residential Tenancy Branch